

446.022

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: : G. Leffers  
DIU-HERCEND et al :  
Serial No.: 09/674,109 : Group: 1636  
Filed: June 21, 2001 :  
For: METHOD ...S.CERVISIAE :

475 Park Avenue South  
New York, N.Y. 10016  
February 25, 2004

**PETITION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants in the above application hereby petition the Commissioner of Patents and Trademarks to exercise his authority under Rule 181 and review the four-way restriction requirement made by the Examiner in the above application. Applicants traverse the restriction requirement and the Examiner made the same final in the office action of November 19, 2003 on the grounds that Applicants' arguments were not convincing because the different inventions referred to different sequences that corresponded to different DNA sequences that encode different.


It is believed that the restriction requirement does not comply with PCT Rule 13 or the MPEP which states in Section 1893.03(d) "Examiners are reminded that unity of invention (not restriction) practice is applicable in international applications (both Chapter I and II) and in the national stage filed under 35 USC 371 application. A

restriction practice continues to apply to U.S. national application filed under 35 USC 11(a).” This application has been filed under 371 and therefore, the issue should be unity of invention and not restriction.

The present invention deals with an invention group linked to a single generic inventive concept as provided by Rule 13 of the PCT Rules. The MPEP states “A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship between the inventions that involve at least one common or corresponding technical feature.” The expression “special technical features” is defined as meaning those technical features that define the contribution which in each application, considered as a whole, makes over the prior art. Applicants believe that the present application conforms to PCT Rule 13.1 where there is a generic concept set forth in the claims which are all properly examined together, namely, using a method for screening of an anti-mycotic functionally similar mycete gene of a Markush group thereof and all of the steps are the same with only the specific gene being different. Therefore, it is deemed that there is a single inventive concept and all of the claims should be examined together in the same application. Merely because different genes are used in the same method is not sufficient grounds for rendering the method claims patentably distinct. There is a technical relationship and all the claims of the invention involve at least one common or corresponding special technical feature and the unity complies with Rule 13 of the PCT Rules.

Therefore, the Commissioner of Patents and Trademarks is respectfully requested to reverse the Examiner's restriction requirement and examine all of the claims together in the same application.

Respectfully submitted,  
Muserlian, Lucas and Mercanti

  
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CAM:sd  
Enclosures